CONFERENCE ON DISARMAMENT

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LETTER DATED SEPTEMBER 1992 FROM THE HEADS OF THE DELEGATIONS OF ARGENTINA, BRAZIL AND CHILE ADDRESSED TO THE SECRETARY-GENERAL OF THE CONFERENCE ON DISARMAMENT TRANSMITTING A COMMENTARY ON THE PROPOSED AMENDMENTS TO THE TREATY OF TLATELOLCO

The Heads of the delegations of Argentina, Brazil and Chile to the Conference on Disarmament have the honour to request you to circulate as an official document of the Conference the text appended hereto, which contains a commentary on the amendments recently submitted to the Treaty of Tlatelolco. This document supplements that transmitted by the Mission of Mexico concerning the actual text of the amendments.

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Commentary on the amendments submitted to the Treaty of Tlatelolco

The present document seeks to provide a summary explanation of the purpose and scope of the proposed amendments to the Treaty for the Prohibition of Nuclear Weapons in Latin America and is not an exhaustive review of each of the amended provisions. However, it has been deemed useful to make, for these purposes, a comparative examination of the present articles and of the effect of the amendments proposed for each of them. As has been said, those amendments focus exclusively on the operational modernization of the Treaty of Tlatelolco's control system and do not affect in any way the principles and fundamental political objectives of the Treaty.

Amendments to article 14

1. There is no change in the text of paragraph 1 of this article, which lays down the obligation of simultaneous submission "to the Agency and to the International Atomic Energy Agency, for their information, [of] semi-annual reports stating that no activity prohibited under this Treaty has occurred in their respective territories". (Although this provision results in the duplication of reports, it is justified because of its implicit indication that both OPANAL and IAEA have an interest in the fulfilment of the fundamental aims of the Treaty of Tlatelolco.)

2. The amendment to the second paragraph is consistent with the principle of relevancy and with that of specialization: the words "to the application of safeguards" are replaced by the more appropriate expression "are relevant to the work of the Agency". The justification for this change is that not all the aspects connected with the application of safeguards are of political interest for the Tlatelolco system; some may be the subject of restrictions under the terms of the safeguards agreements themselves and in conformity with the Statute of the IAEA. This aspect therefore corresponds to a universal trend supported by the Conference of Non-Nuclear-Weapon States, the recommendations in the NPT and the practice of IAEA. Similarly, protection is provided for the specific interest of OPANAL in those aspects that are in fact relevant to its work.

3. The current paragraph 3 on reports for OAS is deleted. The consideration that prevailed is that relations between the Treaty of Tlatelolco and OAS fall exclusively within the technical sphere, through the medium of the Inter-American Nuclear Energy Commission, whose advice the Parties to Tlatelolco may request in so far as the Statute of the Commission permits.

4. In exchange, a new paragraph 3 is added. It simply reinforces and makes clearer obligations that already exist in article 11, paragraph 6, of the Treaty of Tlatelolco and the Statute of the IAEA. In each case, the effect of this new paragraph is not more restrictive but is instead to permit the total or partial dissemination of information providing that the Contracting Party which communicated the information expressly consents thereto.

Article 15

1. The main amendment is that the request for a special report may be made on the application of any of the Parties. This concept was implicit in the

present article 16, since it was hardly conceivable that the General Secretary could take the initiative of asking for a special report without having had brought to his attention an event justifying such an investigation. The aim has been to make this explicit in order to emphasize the idea that responsibility is shared between the Party that is the plaintiff, the Council that authorizes the request and the General Secretary who carries it out in discharge of the responsibilities conferred upon him by article 11, paragraph 3, for ensuring the proper operation of the control system.

Similarly, the language is now more precise, with the event or circumstance giving rise to the request for the special report being described as "extraordinary" and one that really may affect the performance of the Treaty. In this more clearly defined context, the reaffirmation of the Parties' intention to cooperate with the General Secretary acquires broader protection because of the connection between article 15 as amended and the new, amended article 16.

2. The second paragraph of this article is unchanged.

Article 16

1. The first comment to be made is that article 16 is amended throughout, so that it is more appropriate to explain the machinery of the amended provision than to elaborate on each of the paragraphs that are deleted as being superfluous in the new context or as being covered by other provisions of the Treaty of Tlatelolco.

2. The new paragraph 1 concentrates exclusively within the hands of IAEA the possibility of carrying out special inspections:

(a) There are inspections under article 12. This means that the Tlatelolco control system applies with the restrictive indications in paragraph 2 of that article that will serve to guide OPANAL and IAEA in deciding on the pertinence of a given request for a special inspection;

(b) There are inspections under article 13 that are governed by the safeguards agreements concluded by Parties with IAEA. As regards Argentina and Brazil, these countries have a common accounting and control system for nuclear material that represents an additional safeguard within the framework of their safeguards agreement with IAEA;

(c) Parties must request special inspections through the Tlatelolco Council. The latter must, in the first place, assess whether the procedures under article 15 have been applied. If that has been done and the responses by the Party to which the complaint relates are not satisfactory, OPANAL can pass on the request to make a special inspection for consideration by IAEA;

(d) IAEA will reach a decision taking into account all the elements that make up the Tlatelolco control system, its own Statute and its own judgement concerning the feasibility of an inspection. The elements deriving from the Tlatelolco system are:

Safeguards agreements (art. 13);

Reports of the Parties (art. 14);

Right of use of nuclear energy for peaceful purposes (art. 17);

Findings deriving from the collection of information and consultation with the Parties undertaken by the Council (arts. 15 and 16;

The above-mentioned elements in article 12, paragraph 2;

(e) The General Secretary will request the Director General of IAEA for the information from special inspections, so that the information supplied to the IAEA Board of Governors and the Tlatelolco organs is identical;

(f) The information will be studied by the Council and the Conference of the Parties. Obviously, if there has been a violation, article 20 of the Treaty of Tlatelolco applies.

Article 19

The first paragraph of this article is separated from the rest, so as to emphasize the new context of cooperation between OPANAL and IAEA. This Chilean proposal has as its objectives cooperation between OPANAL and IAEA and the facilitating thereby of IAEA's support for the Tlatelolco control system as a whole.

Article 20

This corresponds entirely to the subsequent paragraphs of the former article 19 and therefore requires no comment.

As a final remark, it should be noted that IAEA is also a guarantor of the application of article 18. No amendment has been planned to this article, since the countries proposing the amendments have imposed upon themselves a moratorium with regard to peaceful nuclear explosions, which are temporarily limited by the technical impossibility of distinguishing between nuclear devices for warlike purposes and those that might in the future be made for purely peaceful purposes. As the inalienable right to peaceful nuclear development with the preservation of industrial, technological and commercial secrets, including the right to use nuclear energy for the propulsion and operation of any type of vehicle, is reaffirmed in the agreements concluded between Argentina and Brazil and between those countries and IAEA, it has not been felt necessary either to make any amendment to article 17 of Tlatelolco.